ARGUMENT

I. THE SEVENTH CIRCUIT'S DECISION POSES NO THREAT TO FIRST AMENDMENT FREEDOMS

Although the issue is not even before the Court, petitioners and their *amici* contend that the court of appeals' decision "threatens free speech" and "place[s] at risk a wide array of political and labor protestors." (Brief for Petitioners Joseph Scheidler, Andrew Scholberg, Timothy Murphy and the Pro-Life Action League, Inc. ("Sch. Br.") at 31; Brief of the Concerned Women for America As *Amicus Curiae* Supporting Petitioners at 2; *see* Brief *Amicus Curiae* of Consistent Life, et al. in Support of Petitioners ("CL Br.") at 1-30; Brief of *Amicus Curiae* Americans United for Life in Support of Petitioners at 1.) This alarmist argument has no merit. First Amendment interests are simply not at stake here.

A. First Amendment Questions Are Not Before This Court

As an initial matter, it should be noted that there are no First Amendment questions before this Court. The three questions presented in the petition—(i) whether the Seventh Circuit, on remand, overstepped the bounds of this Court's mandate in *Scheidler II*, (ii) whether the Hobbs Act may be read to proscribe acts or threats of violence that are unconnected to robbery or extortion, and (iii) whether private litigants may obtain equitable relief in a civil RICO action—concern only the scope of this Court's mandate and the proper interpretation of two federal statutes. Thus, just as in *Scheidler I* and *Scheidler II*, the Court should once again "decline to address" any of the First Amendment arguments raised by petitioners and their *amici* (arguments that plainly fail on the merits, as we discuss below) on the indisputable ground that they are outside the limited questions this Court has accepted for review. *See Scheidler I*, 510 U.S. at 262 n.6 ("declin[ing] to address the First

Amendment question argued" when "the question presented for review asked simply whether the Court should create an unwritten requirement limiting RICO to cases where either the enterprise or racketeering activity has an overriding economic motive"); *see also Scheidler II*, 537 U.S. at 397-411 (addressing only the meaning of "extortion" under the Hobbs Act and not addressing any First Amendment issues).

B. Violence and Threats of Violence Are Not Protected Forms of Expression

It is well-settled that acts and threats of violence are not protected by the First Amendment. *See, e.g.*, *Wisconsin* v. *Mitchell*, 508 U.S. 476, 484 (1993) (noting that violent conduct and physical assaults are unprotected by the First Amendment); *Virginia* v. *Black*, 538 U.S. 343, 359 (2003) (noting that threats of violence are unprotected by the First Amendment); *Watts* v. *United States*, 394 U.S. 705, 708 (1969) (same). And, despite what petitioners and their *amici* claim, unlawful acts and threats of violence—*not* protected speech or expressive conduct—are all that is at issue in this case.

In particular, as discussed above, the jury found petitioners liable for engaging in forcible, threatening, violent actions, *not* for peaceful demonstrations or nonviolent protests. *See supra* pp. 1-6. Likewise, the nationwide injunction entered by the district court prohibits only plainly illegal conduct, and it specifically underscores that it "does not prohibit peaceful picketing, speeches, or praying on public property, attempts to speak with patients and staff, handing out literature, or any other activity protected by the First Amendment." (Sch. App. 54a.) Furthermore, the Seventh Circuit's recent decision on remand makes clear that the only potential form of relief still available in this case is an injunction tailored "to redress the four acts of physical violence that the jury found had taken place and that

were not encompassed within th[is] Court's ruling" in *Scheidler II*. (*Id.* at 16a.)[4]

Petitioners and their *amici* point to this Court's decision in *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), in an effort to create a free-speech issue here that simply does not exist. (*See* Sch. Br. at 31-32; CL Br. at 9-16.) *Claiborne Hardware* involved isolated acts of violence as to which there was no evidence of NAACP authorization or ratification. *See Claiborne Hardware*, 458 U.S. at 923-24. With respect to defendant Charles Evers, the Court made clear that Evers could have been found liable had the facts shown that he had "authorized, directed, or ratified specific tortious activity." *Id.* at 927. Evers was absolved of responsibility because of a lack of evidence, not because the First Amendment immunized force or violence. In addition, the Court cited with approval its prior decision in *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941), which held that an injunction was proper in the context of pervasive violent conduct much like the conduct at issue here. *See Claiborne Hardware*, 458 U.S. at 923.[5] Thus, just like the rest of this Court's precedents,

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[4] Under this Court's precedents, such an injunction clearly is not an unlawful prior restraint, as it would follow from the jury's findings of past illegal conduct. *See Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 764 n.2 (1994) (no prior restraint where injunction issued because of prior unlawful conduct); *Schenck* v. *Pro-Choice Network of Western N.Y.*, 519 U.S. 357, 374 n.6 (1997) (rejecting argument that all injunctions are improper prior restraints where injunction prohibited conduct previously adjudicated and found unlawful).

[5] The Consistent Life *Amici* argue that *Milk Wagon Drivers* does not "continue[] to express a constitutionally viable principle after *Claiborne Hardware*" and attempt to rely on an *amicus* brief NOW filed in *Claiborne Hardware* to support this argument. (CL Br. at 13; *see id.* at 11-14.) This makes no sense. Regardless of whatever arguments NOW may have raised before this Court decided *Claiborne Hardware* (which we properly do not address here), the Court made clear in *Claiborne Hardware* that *Milk Wagon Drivers* is still good law. *See Claiborne*

Claiborne Hardware offers no First Amendment protection to acts and threats of violence, *see Claiborne Hardware*, 458 U.S. at 916 ("The First Amendment does not protect violence."); *id.* at 933 ("[V]iolent conduct is beyond the pale of constitutional protection."), and thus provides no support for petitioners' arguments.

Indeed, as noted above, the district court was guided by *Claiborne Hardware* throughout this litigation and gave instructions to the jury, which were upheld on appeal and not accepted for review by this Court, specifically to address the First Amendment. *See supra* pp. 4-6. The Seventh Circuit also considered and properly rejected the very same First Amendment arguments petitioners and their *amici* now attempt to raise in this Court. (Sch. App. at 47a-51a.) And, in *Scheidler II*, this Court declined to grant certiorari on the First Amendment question presented by petitioners. *See supra* p. 6 & n.3. Nor are First Amendment issues before the Court now. *See supra* pp. 6-7, 9-10.

Simply put, no one is trying to silence petitioners from expressing their views about abortion through lawful, peaceful means; indeed, this Court has already noted and petitioners have admitted that the conduct at issue in this case is "criminal." *Scheidler II*, 537 U.S. at 404 & n.9. Respondents simply seek a court order requiring petitioners to put down their weapons and stop using force, violence and threats against respondents and others. That result, as the courts below held and this Court's case law makes clear, is fully consistent with the First Amendment. *See supra* pp. 1-7, 10 and cases cited; *Madsen*, 512 U.S. at 764 n.2 (finding no prior restraint on protected speech where the injunction was issued because of petitioners'

Hardware, 458 U.S. at 923; *see also Schenck*, 519 U.S. at 373, 375 (citing *Milk Wagon Drivers* favorably); *Madsen*, 512 U.S. at 765, 774 (same).

prior unlawful conduct); *see also Scheidler I*, 510 U.S. at 264 (Souter, J., concurring) (noting that there are no First Amendment interests in "keep[ing] RICO from reaching ideological entities whose members commit acts of violence we need not fear chilling").

C. The Seventh Circuit's Decision Is Not "Irreconcilable with the Long History of Social Protest in This Country"

Invoking the names of Martin Luther, King, Jr., Rosa Parks and other champions of civil rights and civil liberties, the Consistent Life *Amici* also contend that the Seventh Circuit's decision on remand somehow conflicts with this nation's "long history of social protest" and "places all social protestors in grave financial jeopardy." (CL Br. at 3, 24; *see id.* at 24-26.) This doomsday analysis is wholly unjustified. Dr. King, Ms. Parks and the other *peaceful* protestors mentioned simply did not engage in the sort of violent threats and physical assaults engaged in by petitioners, proscribed by the Hobbs Act, and at issue in this case. Indeed, petitioners' conduct directly and unequivocally violates the very principles of nonviolence for which Dr. King stood.[6]

As noted above, petitioners here engaged in repeated acts and threats of physical violence. *See supra* pp. 1-4. It is

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[6] Dr. King cautioned against "succumb[ing] to the temptation to use violence in our struggle for freedom" lest our legacy be "a long and desolate night of bitterness" and "a never-ending reign of chaos." Martin Luther King, Jr., *The Words of Martin Luther King, Jr.* 71 (selected by Coretta Scott King, 1996). And, unlike petitioners, he promised to "[r]efrain from violence of fist, tongue, or heart"—and he honored that pledge. *Id.* at 74. Had Dr. King, Ms. Parks and others engaged in the sort of violent conduct engaged in by petitioners here, their actions would quite properly not have received First Amendment protection.

only this violent and, as petitioners admit, "criminal" conduct that is at issue in this case and potentially subject to a well-tailored injunctive remedy. *See supra* p. 6-7, 10-11. Dr. King and Ms. Parks would have nothing to worry about from this case.

Moreover, like Dr. King and his followers, the Consistent Life *Amici* have expressly stated that they are committed to "principles of nonviolent direct action" and do not "encourage or condone the use of violence as a legitimate form of social protest." (CL Br. at 8.) Thus, if they abide by this commitment to nonviolence, the Consistent Life *Amici*, along with any other individuals or groups who voice their views through leafleting, picketing, or other peaceful forms of expression without threatening violence, have nothing at all to fear; they would not be liable under the Hobbs Act and would be fully protected by the First Amendment.[7]

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[7] The contention by the Consistent Life *Amici* that their organizations could still face liability because "sooner or later . . . a member of a loosely defined movement may do things that are not authorized by the leadership" ignores the jury instructions in this case, which made clear that "[l]iability may not be imposed upon any defendant merely because that defendant belonged to a group, some members of which committed acts of violence." (Sch. App. 185a.; *see also id.* at 48a (noting that plaintiffs were required "to show that PLAN itself, and not merely isolated members, intended that the illegal acts occur, that the defendants were aware of PLAN's illegal aims, and that the defendants held a specific intent to further those aims through their association with PLAN").) As the Seventh Circuit made clear, the district court's "exacting test" for organizational liability was fully satisfied by the record in this case. (*Id.*) *See supra* pp. 4-6.

II. INJUNCTIVE RELIEF IS ESSENTIAL IN THIS CASE TO ENSURE THE SAFETY OF MEDICAL PROFESSIONALS

With the creation and implementation of a carefully tailored injunction, the courts below have prevented petitioners from using illegal, forcible, violent, criminal conduct to pursue their cause against reproductive health care providers. Such an injunction remains necessary to ensure the safety of health care providers and those individuals who work for them and for whom they serve, from the violent acts and threats of violence committed by petitioners. Indeed, the violent nature of petitioners' actions, recognized previously by the lower courts, warrants an injunction against the petitioners' continuing attempts at violent and threatening conduct.[8]

A. A Permanent Injunction Is Necessary Given the Nature of the Acts and Threats of Violence Committed by Petitioners

Given the violent nature of petitioners' actions and the refusal of petitioners to cease committing these acts and further threats of violence, the district court's issuance of a permanent injunction that is tailored to the specific violent conduct is essential. As demonstrated above, petitioners did more than just block a few clinic doorways and make a few threats. Their behavior included more than just holding signs or praying in front of clinics. They created and engaged in a pervasive, nationwide course of conduct that was specifically designed to intimidate clinic staff and patients into giving up their

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[8] The Seventh Circuit stated on remand that "it appears that it would be an abuse of discretion for the district court to re-enter any nationwide injunction." (Sch. App. 16a.) For the reasons discussed below, we believe that nationwide injunctive relief is an appropriate (and well-tailored) remedy here. In any event, the precise scope of the injunction is a question properly left for the district court on remand.

constitutionally-protected rights and prevent them from carrying out their business. Moreover, the evidence presented at trial established that petitioners have a history of engaging in such unlawful and criminal conduct. The jury found that over a ten-year period the petitioners "committed . . . acts and threats of violence to persons and property across the United States." (Sch. App. 166a.) The jury also specifically found that petitioners committed "4 acts or threats of physical violence," and this finding undoubtedly led to the design of the district court's injunction against petitioners.[9] In fact, petitioners' counsel readily acknowledged at oral argument in *Scheidler II* "that aspects of his clients' conduct were criminal." 537 U.S. at 404.

The district court further found that despite the passage of the Freedom of Access to Clinic Entrances Act of 1994 ("FACE"), 18 U.S.C. § 248, petitioners' violent conduct against clinics had continued and had thus not eliminated the need for an injunction in this case. Nor have petitioners agreed not to commit unlawful acts in the future, further necessitating an injunction here. At the post-trial hearing, respondents presented evidence of petitioners' illegal activities since the passage of FACE, including:

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[9] "In exercising its equitable jurisdiction, '[a] federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past.'" *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 132 (1969) (quoting *NLRB* v. *Express Publishing Co.*, 312 U.S. 426, 435 (1941)). This Court has thus held that a court's remedy "is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal." *United States* v. *U.S. Gypsum Co.*, 340 U.S. 76, 88-89 (1950).

- Placing of butyric acid in a reproductive health clinic in Orlando, Florida in May of 1998, and petitioners' blocking clinic doors and physically accosting individuals as they attempted to enter a clinic in Chicago in August of 1996. (Sch. App. 167a.)

- Witness testimony that "various injunctions under FACE have been sought and implemented in order to address these activities, but the illegal conduct of the [petitioners] continues as [petitioners] cross state lines to avoid the jurisdiction of the various injunctions." (*Id.*)

- Additional testimony that "blitzkrieg tactics were sometimes used to swoop in on a clinic without warning so as to overwhelm available law enforcement personnel." (*Id.*)

The district court assessed this evidence and found that petitioners had continued their illegal and violent behavior throughout and following the passage of FACE, thus warranting entry of an injunction as to petitioners' conduct. Thus, while, as Justice Ginsburg noted in *Scheidler II*, FACE was crafted as "a statutory response that homes in on the problem of criminal activity at health care facilities," 537 U.S. at 411 (Ginsburg, J., concurring), it is evident from the evidence presented to the district court in this case that this statutory response did not specifically curtail the illegal actions of *these* petitioners. Moreover, FACE might be sufficient to remedy harm done for *future* acts of violence that are directed towards reproductive health care facilities, but that would require an entirely new lawsuit based only on those future acts. For respondents here, FACE is no answer to the extraordinary harm already caused by these petitioners over a period of many years prior to the enactment of FACE. In short, these petitioners should not be permitted to get away with their prior admitted *criminal* conduct, and thus a permanent injunction under RICO to protect

respondents from petitioners' violent conduct must be maintained.[10]

B. A Nationwide Injunction Is the Only Sufficient Remedy

The district court's decision to issue an injunction that was national in scope was also necessary to protect against criminal conduct that was committed by petitioners against reproductive health clinics across the nation. The nationwide scope of the injunction remains necessary because it is clear that petitioners' conduct occurred across the nation and that "injunctions that are geographically limited do not prevent [petitioners] from engaging in illegal conduct." (Sch. App. 167a-168a.) Other courts similarly have held that an injunction can and should be national in scope in the abortion protest context. In *United States* v. *Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996), for example, the Eighth Circuit upheld a permanent injunction against an anti-abortion protester, finding that not only was there an interest in protecting the specific health clinic staff and patients involved in the case but also in protecting the patients and staff of other reproductive health clinics across the country from the criminal conduct of the defendant. The Eighth Circuit found that the defendant "could easily frustrate the purpose and spirit of the permanent injunction simply by stepping over state lines and engaging in similar activity at another reproductive health facility." *Id.* at 929 (internal

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[10] Moreover, it is clear that a permanent injunction is necessary in this case because monetary damages are insufficient to stop petitioners from committing their criminal actions against health clinics. Money simply is not an adequate remedy for the individuals and organizations physically harmed by the violent acts and threats of petitioners. Indeed, here, where petitioners claim to be judgment-proof, the threat of money damages alone has no deterrent effect. And, in any event, the Seventh Circuit held on remand that monetary damages are no longer available in this case. (Sch. App. 16a.)

quotation marks omitted). Courts also have held that an injunction can and should be nationwide in scope in other contexts as well. *See, e.g.*, *United States* v. *Carson*, 52 F.3d 1173, 1184-85 (2d Cir. 1995) (upholding permanent injunction against union official's future participation in affairs of any labor organization); *Bresgal* v. *Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987) (enforcing nationwide injunctive relief for migrant workers against forestry labor contractors not party to the litigation, including those not based in the Ninth Circuit). The reasoning of the *Dinwiddie* court along with the evidence presented at trial of petitioners' violent conduct—acts and threats of physical violence committed by petitioners throughout the United States—further buttresses the necessity of a nationwide injunction against petitioners' actions in this case. *See, e.g.*, *supra* pp. 2-4 (noting petitioners' violent acts and threats committed in California, Delaware, Wisconsin, and Washington, D.C.).

As petitioners admitted before this Court, their actions are clearly criminal. Their acts and threats of violence are not protected activities. *See supra* pp. 9-14. Thus, under *Madsen* and *Schenck*, an injunction against the violent conduct engaged in by petitioners, such as the one entered by the district court, is clearly proper. *See supra* note 4. Moreover, it is clear that the district court's prior determination that the injunction against petitioners' conduct must be nationwide was proper in light of petitioners' violent conduct—which has reached health clinics, patients, and staff throughout the nation. To ensure the safety of those who continue to seek and provide medical services at these health clinics, a nationwide permanent injunction is appropriate here and burdens no protected rights.

CONCLUSION

For the reasons stated above, and those in respondents' brief, *amici* respectfully request that the Court affirm the Seventh Circuit's decision below.

Dated: New York, New York
October 21, 2005

Respectfully submitted,

BLAKE M. CORNISH
EDERLINA Y. CO
NARAL PRO-CHOICE AMERICA
1156 15 Street, NW
Suite 700
Washington, D.C. 2005
(202) 973-3000

MARIA T. VULLO
Counsel of Record
WILLIAM J. TAYLOR, JR.
BETH S. FRANK
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Counsel for Amici Curiae

APPENDIX
Particular Statements of Interest of *Amici Curiae*

American Association of University Women

For well over a century, the American Association of University Women ("AAUW"), an organization of over 100,000 members, has been a catalyst for the advancement of women and their transformation of American society. In more than 1,300 communities nationwide, AAUW plays a major role in mobilizing advocates on AAUW priority issues that promote equity for women and girls, including: equal opportunity in education; reproductive choice; equal pay; preserving social security; and other civil rights issues. AAUW promotes the social, economic, and physical well-being of all persons, including freedom from violence. AAUW believes that in order for women to advance in the workplace, education, and all aspects of their lives, women must be free to make their own reproductive health choices. Therefore, AAUW supports the right of every woman to safe, accessible, and comprehensive reproductive health care, including safe access to family planning services and abortion clinics nationwide.

Americans for Democratic Action, Inc.

Americans for Democratic Action, Inc. ("ADA") is an independent liberal political organization, founded in 1947 by Eleanor Roosevelt, Joseph Rauh, and others, dedicated to promoting individual liberty and economic justice. ADA publishes a weekly legislative newsletter for liberal activists, a quarterly newsletter, special reports, including an annual voting record report that ranks Members of Congress according to a liberal quotient, based on a full spectrum of domestic and international policy issues. In addition to its legislative advocacy, ADA maintains a political action committee to support liberal candidates for Congress. ADA also engages in independent campaign activity in support of presidential candidates.

Black Women's Health Imperative

The Black Women's Health Imperative, formerly the National Black Women's Health Project, is a national, not-for-profit, 501(c)(3), educational, scientific, advocacy, research and leadership development organization. Established in 1983, the organization has taken the lead to ensure optimum health for Black women, physically, mentally and spiritually. The Imperative began and sustains a nationwide Black women's health movement to move personal health to the top of the life agenda of every Black woman, and the health of Black women as a top priority on the legislative, policy, and research agenda of the nation.

Center for Reproductive Rights

The Center for Reproductive Rights (the "Center") is a national public interest law firm based in New York City dedicated to preserving and expanding reproductive rights in the United States and throughout the world. The Center's domestic and international programs engage in litigation, policy analysis, legal research, and public education seeking to achieve women's equality in society and ensure that all women have access to appropriate and freely chosen reproductive health services, including contraceptives. The Domestic Legal Program of the Center specializes in litigating reproductive rights cases throughout the United States and is currently lead or co-counsel in a majority of the reproductive rights litigation in the nation.

Center for Women Policy Studies

The Center for Women Policy Studies was founded in 1972 with a mission to shape public policy to improve women's lives. A hallmark of our work is the multiethnic feminist lens through which we view all issues affecting women and girls. In all of our work, we look at the combined impact of gender, race, ethnicity, class, age, disability, and sexual orientation. We struggle for women's human rights—justice and equality for women at home and abroad. The Center represents the interests of all women in the United States whose right and ability to

control their reproductive lives—without fear of physical harm or intimidation—would be greatly hindered by the actions of organizations like the Pro-Life Action Network ("PLAN") and the absence of appropriate legal redress.

Hadassah, WZOA, Inc.

Hadassah, the Women's Zionist Organization of America, founded in 1912, is the largest women's and Jewish membership organization in the United States, with over 300,000 members nationwide. In addition to Hadassah's mission of maintaining health care institutions in Israel, Hadassah has a proud history of helping to protect the rights of women and the Jewish community in the United States. Hadassah has a longstanding commitment to supporting a women's right to choose abortion and other reproductive health services. Hadassah views freedom of choice as a matter of privacy of the individual to be determined by each woman in accordance with her religious, moral and ethical values. While Hadassah is committed to upholding First Amendment freedoms including the right of peaceful protest, Hadassah condemns violence at family planning clinics.

Legal Momentum

Legal Momentum (the new name of NOW Legal Defense and Education Fund) advances the rights of women and girls by using the power of the law and creating innovative public policy. A major goal of Legal Momentum's work is to secure reproductive rights for all women. To this end, Legal Momentum has litigated numerous cases involving clinic violence and efforts to protect safe access to reproductive health services, including *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) and *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997). Legal Momentum has also intervened on behalf of doctors, women and clinics to defend the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248, against constitutional challenges in several cases.

NARAL Pro-Choice America

NARAL Pro-Choice America Foundation/NARAL Pro-Choice America, with 27 state affiliates and hundreds of thousands of members and supporters nationwide, is dedicated to keeping abortion safe, legal, and accessible for all women. NARAL Pro-Choice America's mission is to support and protect, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, training, organizing, legal action, and public policy. NARAL Pro-Choice America recognizes that the nationwide campaign of anti-choice violence threatens women's right to choose abortion by exacting a physical and emotional price from patients who seek access to medical services, and by exacerbating the shortage of providers of abortion.

National Asian Pacific American Women's Forum

Founded in 1996, the National Asian Pacific American Women's Forum ("NAPAWF") is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American ("APA") women and girls. NAPAWF's vision includes strengthening communities to reflect the social, political, and economic concerns and perspectives of APA women and girls; inspiring leadership and promoting the visibility and participation of APA women and girls in the political process and within the broader national and international women's movement; and creating a vehicle for progressive APA women to connect with others across the country to share strategies and form lasting coalitions around policy initiatives and grassroots organizing campaigns. Reproductive freedom and civil rights are among the central issues that form the basis of NAPAWF's advocacy. NAPAWF believes that all women have the fundamental human right to safely access reproductive health care services, including abortion.

National Center for Lesbian Rights

National Center for Lesbian Rights ("NCLR") is a national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, and public education. Since its inception in 1977, NCLR has had a strong commitment to freedom of expression and association as well as to reproductive autonomy for all women.

National Council of Jewish Women, Inc.

The National Council of Jewish Women, Inc. ("NCJW") is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and strive to ensure individual rights and freedoms for all through its network of 90,000 members, supporters, and volunteers nationwide. As such we endorse and resolve to work for "the protection of every female's right to reproductive choice, including safe and legal abortion, and the elimination of obstacles that limit reproductive freedom." Consistent with our priorities and resolutions, NCJW joins this brief.

National Health Law Program

Founded in 1969, The National Health Law Program ("NHeLP") is a private, non-profit advocacy organization whose mission is to work for increased and improved access to quality health care for low-income individuals and communities. Since its inception, NHeLP's work has included legal and policy analysis, advocacy, information and education on behalf of low-income women to help secure comprehensive health care, including reproductive health services. NHeLP believes that low-income and other underserved communities, including individuals who are uninsured, already have severely limited access to medically necessary services. Violent acts erode the ability of the health care safety net to provide the range of critical health care to low-income communities.

National Latina Institute for Reproductive Health

The mission of the National Latina Institute for Reproductive Health ("NLIRH") is to ensure the fundamental human right to reproductive health care for Latinas, their families and their communities. Through advocacy, community mobilization, and public education, NLIRH is shaping public policy, cultivating new Latina leadership, and broadening the reproductive health and rights movement to reflect the unique needs of Latinas. NLIRH believes that coercive, discriminatory and/or punitive policies and practices are differentially impacting Latinas and other women of color. For example, welfare family caps, prohibitions on publicly funded abortion, court mandated use of Norplant, mandatory HIV testing of pregnant women or newborns, and policies that criminalize pregnant substance users have disparately impacted women of color. While the tactics and subterfuge may vary, these policies all seek to place the locus of control for reproductive health decisions outside of Latinas' hands, thereby violating the fundamental human right to self determination and undermining the health and well-being of Latinas.

National Partnership for Women & Families

The National Partnership for Women & Families is a non-partisan, non-profit advocacy group founded in 1971 that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. The National Partnership firmly believes that quality health care must include access to the full range of women's reproductive health services. As a result, the National Partnership has a long history of promoting and defending a woman's right to choose by filing *amicus curiae* briefs in major reproductive rights and health cases.

National Women's Law Center

The National Women's Law Center is a Washington-based legal organization that has been working since 1972 to advance and

protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. The fundamental right to abortion recognized in *Roe* v. *Wade* is of profound importance to the lives, liberty, health, and safety of women throughout the country. Because of the tremendous significance to women of the freedom to choose whether to bear children, the National Women's Law Center seeks to preserve women's right to abortion, which can only be assured if there is access to health care providers.

Women Employed

Women Employed is a non-profit organization whose mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed maintains that it is every individual's fundamental right to obtain health care, and any restriction or impediment to this right should be unlawful. Likewise, employees engaged in the administration of health care should be guaranteed the right to perform their work free from any form of harassment.

Women's Law Project

The Women's Law Project ("Law Project") is a non-profit feminist legal advocacy organization based in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the Law Project is committed to the elimination of sex discrimination and believes that reproductive freedom is an essential component of women's equality. Since our founding, we have frequently represented medical professionals and patients seeking to provide or receive abortion services, often in the face of organized and concerted anti-abortion violence. Our clients have been subjected to arson, death threats, massive and repeated clinic blockades, vandalism of medical equipment and patient records, chemical

attacks, assaults, bomb scares, anthrax hoax letters, and frequent harassment and stalking of doctors, patients, and staff.

Woodhull Freedom Foundation

The Woodhull Freedom Foundation ("WFF") is a non-profit organization that works to affirm sexual freedom as a fundamental human right by protecting and advancing freedom of speech and sexual expression. The Woodhull Freedom Foundation promotes sexuality as a positive personal, social and moral value through research, advocacy, activism, education and outreach.

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Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF *AMICI CURIAE* OF THE RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE, ET AL. IN SUPPORT OF RESPONDENTS

(List of *Amici Curiae* on Inside Cover)

DAVID J. PFEFFER
IGOR M. TSIBELMAN
ARENT FOX PLLC
1675 Broadway
New York, NY 10019
(212) 484-3900

DEANNE M. OTTAVIANO*
GRETCHEN A. DIXON
MELISSA D. DROLLER
ARENT FOX PLLC
1050 Connecticut Ave., NW
Washington, D.C. 20036
(202) 857-6000

* *Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

LIST OF *AMICI CURIAE*

The Religious Coalition for Reproductive Choice
The American Humanist Association
Americans for Religious Liberty
Disciples for Choice
The Unitarian Universalist Association
United Church of Christ Justice and Witness Ministries

QUESTIONS PRESENTED

Amici will address the following questions:

1. Whether the Hobbs Act prohibits acts or threats of physical violence that obstruct, delay or affect interstate commerce?

2. Whether RICO authorizes the district courts to grant injunctive relief in private lawsuits?

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INTEREST OF *AMICI CURIAE*

Amici[1] are voluntary associations of persons committed to the principle that every woman must be free to decide if and when to have children according to the dictates of her conscience and religious beliefs.[2]

The lead organization – The Religious Coalition for Reproductive Choice – founded in 1973 by clergy and laity, is a non-partisan, non-profit education and advocacy organization of national groups and caucuses from major denominations including the Episcopal Church, Presbyterian Church (USA), United Church of Christ, United Methodist Church, Unitarian Universalist Association, and Reform and Conservative Judaism. Although the membership has diverse views about abortion rights, all agree that decisions about family, including whether and when to have children, are matters of individual conscience that must be made free of coercion and violence of any kind.

Amici believe that free, peaceful and unrestricted debate on the issue of abortion is a fundamental aspect of religious and constitutional liberty. However, religious and constitutional freedoms cannot flourish in a society that permits organizations to engage in violence, threats and fear without restraint. It is important to us and to all who

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part and that no person or entity, other than the *amici curiae*, their members or counsel, made a monetary contribution to the preparation or submission of this brief. This brief is submitted with the consent of the parties, whose consent letters have been filed with the Clerk.

[2] Individual statements of the *amici curiae* are attached in the Appendix.

seek peaceful social dialogue that our activities not be tarnished by the false invocation of religious and constitutional freedom to justify violence, threats and fear in an effort to forcefully impose beliefs on others.

A nationwide injunction is particularly important where the victims – which include clergy, their families, their homes and others – are lawful individuals or businesses engaging in the free exercise of religious expression, and when law enforcement cannot or does not protect those who, like the clinics and women here are "especially vulnerable to the threat of mob violence." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 349 (1993) (O'Connor, J., dissenting).

Amici are interested in a final and prompt resolution of this case because religious organizations, their members and others who disagree with petitioners' beliefs should be permitted to seek protection from the violent behavior aimed at suppressing the free exercise of their legal, religious and constitutional freedoms. Consequently, *amici* file this brief in opposition to petitioners, urging that federal district courts should be permitted to issue injunctive relief under the Hobbs Act and RICO to prevent and restrain these continued acts of violence no matter where they may occur.

SUMMARY OF ARGUMENT

The decisions of the lower courts demonstrate that petitioners' nationwide pattern of crimes included violent assaults and physical attacks on patients, doctors, clinic staff, and police, plus destruction of medical equipment, supplies, and other property, committed for the purpose of

obtaining control over the property of women's health centers and their patients. *See National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001), *National Organization For Women, Inc. v. Scheidler*, 91 Fed.Appx. 510, 2004 WL 375995 (7th Cir. 2004).

These violent crimes have but one purpose: to hinder a woman's free choice to decide if and when to have children according to the dictates of her conscience and religious beliefs. It is not enough for petitioners and those like them to peacefully assemble and debate the social and religious issues of abortion. They act in organized groups to overwhelm local police forces, blockade the entrances to clinics, and commit criminal acts of violence on those who have different religious beliefs. *Id.*

The lower courts applied federal law to prohibit petitioners' violent efforts to impose their views on others, yet allowed petitioners to peacefully assemble, speak and pray in furtherance of their beliefs. Those courts, in our view, struck the proper balance between protecting the constitutional freedom to peacefully advocate social change while prohibiting the violent curtailing of the freedom of others to act differently and to adhere to different beliefs.

Campaigns of threats and violence against women and others who may seek or convey information about reproductive choice are not limited to health clinics. What happened to the respondents to compel them to commence the underlying class action almost twenty years ago is also compelling today. Following Congress' attempt to craft a response (the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (1994)) that homes in on the criminal activity at health care clinics, some protesters have altered their conduct by engaging in violent activity at places

other than clinics. The homes of clergy, private residences and other places have been reported as targets in order to circumvent injunctions and other penalties under the Freedom of Access to Clinic Entrances Act.

Clergy members, their families and others who exercise their First Amendment right to religious expression, and who seek to convey information about reproductive choice, have also fallen victim to actual and threatened force, violence and fear. Indeed, notwithstanding petitioners' contention that they abandoned their wrongful conduct after enactment of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, the trial court found that petitioners pattern of crimes had continued unabated and that petitioners continue to cross state lines to promote and carry out their crimes in new jurisdictions. The district court therefore concluded that an injunction was necessary. *See National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001); *National Organization For Women, Inc. v. Scheidler*, 91 Fed.Appx. 510, 2004 WL 375995 (7th Cir. 2004).

In crafting its injunction against petitioners, the district court was careful not to impose liability on constitutionally protected speech and other activity. The critical distinction between petitioners' constitutionally protected rights of speech, assembly and religion and their unlawful acts and threats of violence was carefully tailored in the nationwide injunction entered by the district court to implement the jury verdict. *National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687, 705 (7th Cir. 2001).

However, during the twenty years that this case has been litigated, petitioners have demonstrated that they will continue to engage in their violent actions in order to